

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF ARKANSAS
FAYETTEVILLE DIVISION

UNITED STATES OF AMERICA

PLAINTIFF

v.

CASE NO. 16-50011

BARRY GARCIA

DEFENDANT

MAGISTRATE JUDGE'S REPORT AND RECOMMENDATION

On February 9, 2016, the Court entered an order (Doc. 12) granting the Defendant's unopposed motion for a competency evaluation. On April 5, 2016, the Court received a psychological evaluation report from Dr. Robert Johnson, a psychologist at the Federal Correctional Institution in Fort Worth, Texas. (Doc. 18.) In this report, Dr. Johnson opines that Defendant is not competent to proceed to trial. The undersigned conducted a telephonic hearing on April 6, 2016, and both defense counsel and Government counsel conceded the incompetency finding. Based on Dr. Johnson's evaluation and uncontested finding, the undersigned finds and recommends as follows:

- * The Defendant should be found incompetent to proceed to trial at this time.
- * Pursuant to 18 U.S.C. § 4241(d)(1), the Defendant should be committed to the custody of the Attorney General or his authorized representative to hospitalize the Defendant for treatment in a suitable facility for such a reasonable period of time, not to exceed four months, to determine whether there is a substantial probability

that in the foreseeable future he will attain the capacity to permit the proceedings to go forward. The Bureau of Prisons is requested to return the Defendant to the Fort Worth Federal Correctional Institution if possible.

- * The delay occasioned by the competency proceedings and hospitalization of the Defendant is excludable under the provisions of 18 U.S.C. § 3161(h)(1)(A) & (F).

The parties have fourteen days from receipt of the Report and Recommendation in which to file written objections pursuant to 28 U.S.C. § 636(b)(1). The failure to file timely objections may result in waiver of the right to appeal questions of fact. The parties are reminded that objections must be both timely and specific to trigger de novo review by the district court.

DATED this 6th day of April, 2015.

/s/ Erin L. Setser

HON. ERIN L. SETSER
UNITED STATES MAGISTRATE JUDGE